

FILED  
SAN MATEO COUNTY

JUL 09 2019  
Clerk of the Superior Court  
BY DEPUTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

SIX4THREE, LLC, a Delaware limited liability company,

Plaintiff,

v.

FACEBOOK, INC., a Delaware corporation; MARK ZUCKERBERG, an individual; CHRISTOPHER COX, an individual; JAVIER OLIVAN, an individual; SAMUEL LESSIN, an individual; MICHAEL VERNAL, an individual; ILYA SUKHAR, an individual; and DOES 1-50, inclusive,

Defendants.

Case No. CIV 533328

Assigned for all purposes to Hon. V. Raymond Swope, Dept. 23

**ORDER STRIKING PLAINTIFF COUNSEL  
MACDONALD FERNANDEZ LLP'S  
PEREMPTORY CHALLENGE  
APPLICATION PURSUANT TO CCP  
SECTION 170.6**

CIV533328  
ORD  
Order  
1926131



IT IS HEREBY ORDERED that Plaintiff's peremptory challenge filed July 2, 2019 against Judge V. Raymond Swope, Department 23, is STRICKEN as untimely, and thus procedurally improper.

THE COURT FINDS as follows:

Plaintiff Six4Three LLC, the original Plaintiff in this lawsuit, has retained new counsel, who filed a peremptory challenge on July 2, 2019.

"It is settled that the challenged judge may rule on the timeliness of a peremptory challenge."

*Micro/Vest Corp. v. Superior Court* (1984) 150 Cal.App.3d 1085, 1089; *Bambula v. Superior Court* (1985) 174 Cal.App.3d 653, 656. Code of Civil Procedure Section 170.4(b) provides that "if a statement of disqualification is untimely filed or if one its fact it discloses no legal grounds for disqualification, the trial judge against whom it was filed may order it stricken."

This lawsuit was deemed “complex” and single assigned for all purposes to Judge V. Raymond Swope, Department 23, by Order filed January 29, 2018, after certain Defendants exercise a peremptory challenge of the previously assigned judge.

The ability to exercise a peremptory challenge, which is a creature of statute, is limited by the statute itself. Section 170.6(a)(2) provides that where a judge is single assigned for all purposes, “the motion shall be made to the assigned judge or to the presiding judge by a party within 15 days after notice of the all purpose assignment, or if the party has not yet appeared in the action, then within 15 days after the appearance.”

Plaintiff’s peremptory challenge is untimely. Department 23 was single assigned as the all purpose judge in this case back in January 2018, over 1-1/2 years ago. Plaintiff’s opportunity to exercise under Section 170.6 expired back in February 2018.

IT IS SO ORDERED.

Dated: JUL 08 2019



Honorable V. Raymond Swope  
Judge of the Superior Court of California